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No. 80-850

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ELIE JONES, WARDEN, STONE MOUNTAIN CORRECTIONAL INSTITUTION, *Appellant,*

v.

BOBBY H. HELMS, *Appellee*

On Appeal From The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR THE APPELLEE

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BRIEF FOR THE APPELLEE

SUMMARY OF THE ARGUMENT

Georgia Code §74-9902(a) classifies the crime child abandonment according to whether the parent has travelled or migrated from Georgia, making the offense a felony if he has. It does so without regard to whether the parent has left the state to flee or to compound the offense or indeed even whether his travel has any connection at all with the offense.

Penalizing the constitutionally secured right to travel, Code §74-9902(a) is subject to strict scrutiny and bears a heavy burden of justification: its classification must be reasonably necessary to promote a compelling state interest.

It cannot escape strict scrutiny as a statutory classification with an impact narrowly confined to those convicted

or accused under it and to their "rights" to flee from justice. The statute chills the right to travel of every parent who may ever be subject to its enhanced penalty. It attaches a penalty not just to flight but to travel for any reason.

The only real interest offered in justification is that the discriminatory treatment facilitates extradition. However, legitimate this interest might be, it does not make the discrimination necessary. In fact, the interest is well served by other means. In addition, Georgia can serve the interest by simply making all child abandonments felonies or by more carefully refining the felony offense in terms which do not needlessly penalize the right to travel.

ARGUMENT

I. The Court of Appeals Examined the Discriminatory Classification of Georgia Code §74-9902(A) Under the Appropriate Test, "Strict Scrutiny."

Ordinarily, a statutory classification or discrimination must simply have a plausible and rational connection with some legitimate state interest in order to pass muster under the Equal Protection Clause, *McGowen* v. *Maryland,* 366 U.S. 420 (1961), *Dandridge* v. *Williams,* 397 U.S. 471 (1970), *Reed* v. *Reed,* 404 U.S. 571 (1971). *See also Vance* v. *Bradley,* 440 U.S. 93 (199). If not wholly irrational or arbitrary, it will not be set aside merely because it "is not made with mathematical nicety or because in practice it results in some inequality," *Lindsey* v. *Natural Carbonic Gas Co.,* 220 U.S. 61, 78 (1911).

This "traditional" inquiry "involves a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one," *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307, 314 (1976), and its recognition that legislatures are better suited to resolve conflicting issues of public policy, see *Dandridge* v. *Williams*, *supra* at 487-88, *San Antonio School District* v. *Rodriguez*, 411 U.S. 1, 40-43 (1973), *Harris* v. *McRae*, ___ U.S. ___, ___ (1980). It also reflects the confidence implicit in our very form of government that in due course the democratic process can rectify unwise legislation and correct and improve imperfect legislation without the necessity of intervention by the courts. *See Vance* v. *Bradley*, *supra* at 97.

It is a different inquiry altogether, however, if the legislation significantly infringes on some right secured by the Constitution,[1] or if it involves certain "suspect" criteria.[2] The implication of fundamental values ordained in the Constitution moves the matter beyond the realm of shifting public policy and more comfortably into the special bailiwick of the courts.

Such legislation is presumptively unconstitutional, *City of Mobile* v. *Bolden*, 446 U.S. 55, 76 (1980) (plurality

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[1] *E.g.*, *Williams* v. *Rhodes*, 393 U.S. 23 (1968) (First Amendment rights), *Bulloch* v. *Carter*, 405 U.S. 134 (1972) (the right not to be unreasonably excluded from the franchise), *Zablocki* v. *Redhail*, 434 U.S. 374 (1978) (fundamental rights of personal privacy).

[2] *E.g.*, *McLaughlin* v. *Florida*, 379 U.S. 84 (1964) (race), *Graham* v. *Richardson*, 403 U.S. 365 (1971) (alienage).

opinion of Stewart, J.), *Harris* v. *McRae*, ___ U.S. ___, ___ (1980), and it is subject to the "strict scrutiny" of the judiciary. It must be justified as "reasonably necessary," *Bulloch* v. *Carter, supra* at 144 (emphasis added), "to promote a *compelling* governmental interest," *Shapiro* v. *Thompson*, 394 U.S. 618, 634 (1969). That is, it must "be not merely convenient, but necessary" and it must "promote not merely a constitutionally permissible state interest, but a state interest of substantial importance," *Oregon* v. *Mitchell*, 400 U.S. 112, 229 at 247, n. 30 (1970) (separate opinion of Brennan, J.).

To determine which inquiry is appropriate and what measure of justification is necessary depends upon "the nature of classification and the individual interests affected," *Memorial Hospital* v. *Maricopa County*, 415 U.S. 250, 254 (1974), *Dunn* v. *Blumstein*, 405 U.S. 330, 335 (1972).

These matters are clear on the face of Georgia Code §74-9902(a). For purposes of punishing those convicted of child abandonment, the statute creates two classes of parents[3] indistinguishable from each other except that

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[3] One class is actually composed of two sub-classes which are subjected to the same treatment: (a) parents who commit child abandonment and then leave the state and (b) parents who leave the state and then commit the offense. See brief for the Appellant, p. 12 and the opinion below at A. 33. The first sub-class seems roughly focused on sojourners from Georgia (though it is broad enough also to include parents who establish residency elsewhere). The second seems to be directed mainly toward those who have migrated to another state (though it too is broad enough to include sojourners). Although the sub-classifications are insignificant from the right-to-travel ap-

those in one class have travelled from the state.[4] The former, short of a third offense, are subject only to risk of a misdemeanor sentence of 12 months. The latter, "merely by their presence outside the State, are exposed to a risk of felony conviction" (A. 33) and a three-year sentence.

Although occasionally the Appellant treats it as if it were (Brief for Appellant, pp. 17, 22; *see Garren* v. *State*, 245 Ga. 323, 264 S.E.2d 876 [1980]), Code §74-9902(a) is not drafted in terms of flight to avoid prosecution or to commit or compound child abandonment. Compare Ark.Rev.Stat. §41-2504 (1975), Mont.Rev. Codes Ann. §45-5-621 (1979), Okla.Stat.Ann. tit. 21, §852 (West) (1951). Nor has it ever been given such a limiting con-

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proach, the second sub-class more clearly also implicates the privileges and immunities claim (Article IV, Section 2; see A. 22) which the Court of Appeals pretermitted. *See generally Hicklin* v. *Orbeck*, 437 U.S. 518 (1978).

[4] Only a few other states comparably classify child abandonment according to travel or residency outside of their jurisdictions. See Appendix to Brief and Ark.Stat.Ann. §41-2405 (1947), Mont.Rev. Codes Ann. §45-5-621 (1979). Okla.Stat.Ann. tit. 21, §§851-852 (West) (1951), R.I. Gen. Laws §§11-2-1, 11-2-2 (1969 Re-enactment, Supp. 1980), Tex. Penal Code Ann. §25-05 (1974), Utah Code Ann. §76-7-201 (1968). The remaining states either make all abandonments a felony or a misdemeanor or else grade the crime according to elements with a neutral impact on the right to travel. See, e.g., Fla.Stat.Ann. §872-04 (Supp. 1979) (felony if abandonment causes great bodily harm or permanent disability), Neb.Rev.Stat. §28-449 (1975) (duration under 20 days is a misdemeanor, over 30 days is a felony), Wash.Rev. Code Ann. §26-20.030 (Supp. 1980) (child under 16, felony; over 16, gross misdemeanor).

struction, *see People* v. *Jones*, 257 Ca.App.2d 235, 64 Ca.Rptr. 622 (1967), and *Dunham* v. *State*, 169 Ark. 257, 275 S.W. 325 (1925). As the Appellant acknowledged, "a parent does not have to [leave Georgia] with intent to avoid prosecution" in order to be liable as a felon (Brief for Appellant, p. 25). In fact, under the plain terms of the statute, leaving the state need not even have any direct connection to the child abandonment or even be a part of it. Compare R.I. Gen. Laws §11-2-2 (1969 Re-enactment, Supp. 1980). Leaving the state for *any* reason at all, commendable or innocent as well as culpable, triggers the special felony jeopardy.

The classification turns directly upon parents' exercise of the right to travel or migrate to other states of the Union. It explicitly attaches to the exercise of that right a criminal penalty, a special risk of felony treatment if charged or convicted of child abandonment. *See United States* v. *Jackson*, 390 U.S. 570 (1968), *Zablocki* v. *Redhail, supra.* It attaches a penalty far less mistakably than the legislative schemes which this Court disposed of in *Shapiro* v. *Thompson, supra, Memorial Hospital* v. *Maricopa County, supra,* and *Dunn* v. *Blumstein, supra,* all of which involved only civil disabilities generated by durational residency requirements.

It is far too late in the day to maintain seriously that the right to travel on which Code §74-9902(a) turns is not a right firmly secured by the Constitution. *See Crandall* v. *Nevada*, 6 Wall. (73 U.S.) 35 (1868), *Edwards* v. *California*, 314 U.S. 160, 177 (1941) (Jackson, J., concurring), *United States* v. *Guest*, 383 U.S. 745 (1966), *Shapiro*

v. *Thompson, supra, Dunn* v. *Blumstein, supra, Memorial Hospital* v. *Maricopa County, supra.*

Since the right therefore may not be unreasonably or unnecessarily impeded without compelling justification, *Dunn* v. *Blumstein, supra* at 341, Code §74-9902(a) warrants the strict scrutiny of the Court of Appeals (A. 33) and just as comparable statutes have received, *see In re King,* 90 Cal.Rptr. 15, 474 P.2d 983 (1970).

The Appellant objects to applying the strict scrutiny test, however, (1) because those subject to the enhanced penalty of Code §74-9902(a) or its threat do not have, in his view, the same constitutional right to travel as the rest of the citizenry (Brief for Appellant, pp. 10-26) and (2) because, with the affected class thus limited to the culpable, the statute does not really "penalize" the right to travel but merely (and reasonably) restricts "the right of an accused to avoid the consequences of his misdeeds" (*id.*, pp. 19, 27-30). Under his analysis, the affected class is only composed of those "parents who commit the crime of child abandonment" (*id.*, pp. 21, 26; see also p. 29) or who are accused of it (*id.*, pp. 21-22, 26). As the rights of criminals and those accused of crime are commonly circumscribed, Code §74-9902(a) affects the constitutional right to travel "only incidentally and remotely" (*id.*, p. 28).

While it is true that only those parents who leave the state and are later convicted of child abandonment will be the only ones ever to suffer directly the discriminatory penalty, it does not follow that they are the only ones

who fall under its shadow and whose rights to travel are encumbered. No one, including the only parents affected in the Appellant's narrow view, can identify in advance of a charge, trial, and conviction which parents fit into that class of unworthies not constitutionally entitled to travel with impunity. *See Aptheker* v. *Secretary of State,* 378 U.S. 500, 509-12 (1964). The presumption of innocence makes them all indistinguishable. Furthermore, since the statute itself contemplates that charges can arise after a parent has left the state and established residency elsewhere, its impact cannot even be limited to a discrete class of parents who cross the state line while "accused" of child abandonment.

In the second place, lacking any sort of specific intent or purpose associated with the departure element, or indeed any necessary connection between departures and the acts constituting the abandonment, the statute's use of the right to travel is blatently arbitrary on its face. It can reach and brand as the distinguishing element of a felony any parent's most innocent and innocuous travel from the state. By its terms, a parent who strolls from Columbus, Georgia, to Phoenix City, Alabama, and back again that evening may have inadvertently opened himself up to a special felony conviction if he has not been adequately supporting his children or to jeopardy of it if there could be any questions of it. The parent who leaves Georgia to find work or job training (see A. 16-17) so that he might better support his family faces the same risk, as does the pilot for Delta Airlines or the steward on

the Southern Crescent.[5] There is nothing intrinsically culpable about this sort of travel, which Code §74-9902(a) nonetheless makes an element of the offense, which would reliably alert any parent that he is exercising a right that he does not fully have so that, if charged with child abandonment, he might be punished as a felon.[6]

The Court of Appeals took the correct view, *see Zablocki* v. *Redhail, supra* at 387, and the only possible view of the affected class when it defined it in broad terms of

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[5] It is no answer to this that if these parents were doing all that they could for their children they would have nothing to worry about. Not only is every parent presumptively innocent of abandonment until convicted, but those actually on the borderline — but on the right side of it — are entitled not to be encumbered in their right to travel. See *Zablocki* v. *Redhail, supra* at 387.

[6] This arbitrary aspect of the statute highlights a separate equal protection deficiency in it which the Court of Appeals did not address, its violation of "the requirement of some rationality in the nature of the class singled out," *Rinaldi* v. *Yeager*, 384 U.S. 305, 308-09 (1966), for treatment as felons for "intrinsically the same quality of offense," *Skinner* v. *Oklahoma*, 316 U.S. 535, 541 (1942), as misdemeanants who never leave the state or those who flee and hide out within the state. *See also James* v. *Strange*, 407 U.S. 128 (1972). Under Code §74-9902(a), a parent who flees the several hundred miles for the North Georgia mountains to conceal himself in the South Georgia swamps specifically to avoid supporting his children is guilty of less of an offense than his neighbor who spent a day looking for work in Chattanooga, Tennessee. The actual intentions of either are irrelevant but the latter, as the Appellant justifies the statute, is saddled with an implicit irrebuttable presumption that he knowingly and wilfully did something to compound his crime. This sort of rationale is impermissibly arbitrary. *See Carrington* v. *Rash*, 380 U.S. 89 (1965), *Aptheker* v. *Secretary of State, supra* at 510-11, regardless of the nature of the individual interest implicated or the legitimacy of the state's countervailing interest, *Rinaldi* v. *Yeager, supra, James* v. *Strange, supra.*

"risk of a felony conviction" (A. 33). That embraces *any* parent with children in Georgia since *any* parent might some day find himself accused of abandonment and threatened with felony punishment simply because of his travel from the state. It includes any parent regardless of whether he is ever actually deterred by the statute or not, *Memorial Hospital* v. *Maricopa County, supra* at 247-58, *Dunn* v. *Blumstein, supra* at 339-40, *Zablocki* v. *Redhail, supra* at 387. Good or bad, actually innocent or only presumptively so, Code §74-9902(a) chills the right to travel of every parent with children in Georgia by attaching a special risk to its free exercise, *see United States* v. *Jackson, supra.*

If the affected class cannot sensibly be restricted to parents who have abandoned their children or who have been accused of it or who have formed an intent to do so, then it follows that the affected interest also cannot be restrictively treated as merely the interest of criminals or fugitives in avoiding their support obligations or prosecution (Brief for Appellant, pp. 19, 21-22, 26) and the equal protection challenge dismissed as only incidentally affecting the right to travel.[7] Code §74-9902(a) is not, by its

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[7] In this part of his argument, the Appellant points out that the rights of those accused of crime may be circumscribed in many respects which impinge upon the right to travel. He relies chiefly on interstate extradition which, like Code §74-9902(a), does not requiring leaving the state with any specific intent in order to be considered a fugitive. As another creature of the Constitution (Art. IV, Sect. 2, Cl. 2), however, what occurs with respect to extradition has little if any bearing in any discussion of the right to travel and limitation imposed on it from another quarter. Any impingement by one con-

own plain terms particularly concerned with any of the usual indications of fugitivity: the purpose or intent with which a parent leaves the state, with whether the charges arose before or afterward, with whether the crime occured before or afterward. It has utterly no concern with whether he is actually a fugitive or a parent bent on compounding a crime. It treats any parent ensnared for abandonment and eligible for felony prosecution for departing the state as if he had exercised a non-right to flee or compound a crime, *see Mahon* v. *Justice*, 127 U.S. 700 (1887), rather than simply exercising his right to travel, and anyone accused is powerless to try to establish otherwise.[8] Code §74-9902(a) is a "statutory blunderbuss," *Zablocki* v. *Redhail, supra* at 403, 405 (Stevens, J., concurring), pointed straight at the right to travel.

None of the precedents from this Court support the Appellant's tortured, narrow view of "the nature of the classification and the individual interests affected," *Memorial Hospital* v. *Maricopa County, supra* at 254. None afford a basis for anything but strict scrutiny.

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stitutional procedure on another constitutional right is not necessarily something that a state statute, in another context altogether, can share. As for the Appellant's reliance on differences in treatment occasioned by statutes tolling periods of limitations during absence from the state, that sort of procedural accomodation to the right to travel, designed to secure *equal* treatment for those who remain in the state, is scarcely comparable to the criminal penalty affixed by Code §74-9902(a). *Compare Zablocki* v. *Redhail, supra, with Califano* v. *Jobst*, 434 U.S. 47 (1977).

[8] See n. 4, *supra*.

II. Particularly in View of the "Less Drastic Means" Available to Secure the State's Only Real Interest, the Statutory Classification Based on the Exercise of the Right to Travel Cannot be Justified as Necessary.

The Appellant has advanced two basic interests to justify the discrimination in penalty based upon interstate travel which Code §74-9902(a) sanctions, the state's "interests in protecting the welfare of its children and the integrity of its criminal laws" (Brief for Appellant, p. 30).

Though it has obvious appeal as far as the Appellant's position it concerned, "Georgia's interest in enforcing her criminal laws" (*id.*, p. 15) is not an interest which is properly distinct from the interest the particular criminal law itself was designed to secure. If if were, it would be a useful bootstrap, but a discrimination is no less invidious or more justifiable simply because it is lodged in a penal rather than a civil code. The discrimination or the burden on a constitutional right should be no less free of scrutiny simply because it wears the solemn robes of the criminal law.

Indeed, this Court has never treated the fact that a law is penal as adding any special virtue to it just because of the general public interest in the enforcement of the criminal law. Such a statute was involved in *Zablocki* v. *Redhail, supra, Aptheker* v. *Secretary of State, supra, Loving* v. *Virginia,* 388 U.S. (1967), and *McLaughlin* v. *Florida, supra,* to name only a few, but no state interest in the enforcement of the criminal law as an end in itself deflected this Court's scrutiny. See also *United States* v. *Jackson, supra.*

The other general state interest asserted, "protecting its children and deterring and punishing anti-social conduct" (Brief for Appellant, p. 13) is unquestionably a "legitimate and substantial" one, *Zablocki* v. *Redhail, supra* at 388. However, while it is clearly the *general* objective of Code §74-9902, it is not the *precise* interest to which the discrimination in subsection (a) is directed and against which it should be weighed. The more precise interest — and the same interest which the general invocation of the integrity of the criminal law basically boils down to in the Appellant's argument — is to facilitate extradition. (See Brief for Appellant, pp. 30-41.)

Whether this precise interest is a compelling one is not a question to linger long over,[9] for it is only part of the inquiry. The rest of it is whether the statutory classification or discrimination is necessary to promote the interest, *Dunn* v. *Blumstein, supra,* for

> even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose. *Shelton* v. *Tucker,* 364 U.S. 479, 488 (1960) (footnotes omitted).

Accord: *Dunn* v. *Blumstein, supra, Kusper* v. *Pontikes,* 414 U.S. 51 (1973), *Aptheker* v. *Secretary of State, supra.*

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[9] However, the availability of other workable procedures aimed at the same goal, discussed *infra* and at A. 34, certainly suggests that it is not.

Where fundamental rights are implicated, legislation must be drawn with precision, *NAACP* v. *Button*, 371 U.S. 415 (1963), and carefully tailored to serve its objective, *Shapiro* v. *Thompson, supra*. Code §74-9902(a) is not narrowly or precisely drawn. It has an impact far beyond any concerned just with problems of extradition. It penalizes people who have done absolutely nothing to jeopardize Georgia's interests in returning fugitives to her courts.

Apart from the statute's overbreadth, there are two problems with establishing any necessity for indiscrimate penalty which Code §74-9902(a) attaches to the right to travel in the name of facilitating extradition.

The first, emphasized by the Court of Appeals (A. 34), is the actual existence of other procedures under the Extradition Clause and the Uniform Reciprocal Enforcement of Support Act which should reasonably accomplish the objective claimed for the discrimination in Code §74-9902(a) without specially penalizing the right to travel. *See Zablocki* v. *Redhail, supra* at 389-90. Like everything else devised by man, these procedures no doubt occasionally work imperfectly (see Brief for Appellant, pp. 21, 23, 26-37), but that hardly justifies an extreme interference with the right to travel. Moreover, there is no reason to suppose that the authorities in other states would be any more cooperative in returning their fellow citizens to the discriminatory prosecution authorized by Code §74-9902(a).

The second problem is that a number of "less drastic means" which do not involve the discrimination of Code

§74-9902(a) are easily open to Georgia if she really considers that interstate travel affects her interests in extraditing parents who have abandoned children in Georgia. For one very simple thing, she could make all child abandonment felonies and treat every parent equally without regard to whether he has exercised the right to travel.[10] She might make her intrusion onto the right to travel truly incidental by identifying actual aggravating elements (such as a purpose or intent to compound the crime) in a way neutral to the constitutional right and applicable if the parent never leaves the state.[11] *Cf.*, *Aptheker* v. *Secretary of State, supra.* Possibly, she might refine her intrusion onto the right to travel by compling a specific intent or purpose to its exercise.[12]

In any event, the statutory discrimination itself is plainly not necessary to any interest Georgia has offered and it is not narrowly tailored to any such interest. It is not necessary to any legitimate state interest to treat every parent who leaves the state as a potential felon bent upon escaping justice and compounding crime and every parent who does not as a misdemeanant. *See Aptheker* v. *Secretary of State, supra* at 509-11.

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[10] A number of states take this approach. See Appendix, *infra.*

[11] See n. 4, *supra.*

[12] But *cf.*, *Crandall* v. *Nevada, supra.*

CONCLUSION

This Court should affirm the judgment of the Court of Appeals and hold Georgia Code §74-9902(a) repugnant to the Equal Protection Clause of the 14th Amendment.

JAMES C. BONNER, JR.
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APPENDIX

APPENDIX TO BRIEF

CHILD ABANDONMENT STATUTES

Ala. Code tit. 13A, §13A-13-5(1978) (Class A Misdemeanor)

Alaska Stat. §11.51.120 (Supp. 1980) (Class A Misdemeanor)

Ariz. Rev. State. §12-2458 (Supp. 1980) (Class 6 Felony)

Ark. Stat. Ann. §41-2405 (1947) (Class A Misdemeanor [sentence not exceeding one year] *except* if parent leaves or remains outside state with purpose to avoid duty of support it is a Class D Felony [sentence not exceeding five years imprisonment])

Cal. Penal Code §270 (West) (1981) (Misdemeanor)

Colo. Rev. Stat. art. 6, §14-6-101 (Supp. 1978) (Class 5 Felony)

Conn. Gen. Stat. Ann. §53-304 (Supp. 1980) (imprisoned not more than one year)

Del. Code tit. 13, §502 (revised 1974) (fine no more than $500.00 or hard labor for no more than one year, or both)

D.C. Code Encycl. §§22-901-22-903 (West) (1967 Supp. 1978-79) (Misdemeanor)

Fla. Stat. Ann. §827.04 (Supp. 1979) (misdemeanor *except* if causes great bodily harm or permanent disability) (Felony of 3rd degree)

Ga. Code §74-9902 (1933, 1978) (misdemeanor *except* after leaving state-felony)

Haw. Rev. Stat. §709-903 (1976 Replacement) (Misdemeanor)

Idaho Code §18-401 (1972 Supp. 1980) (Felony)

Ill. Ann. Stat. ch.40, §1101 (Smith-Hurd) (1979) (Class A Misdemeanor)

Ind. Code Ann. §§35-46-1-4, 35-46-1-5 (Burns) (1979 Replacement)

Iowa Code Ann. §726.5 (West) (1978) (Class D Felony)

Kan. Stat. §21-3605 (Supp. 1979) (Class E Felony)

Ky. Rev. Stat. Ann. §530-040 (Baldwin) (1975) (Class D Felony)

La. Stat. Ann. §14:74 (West) (Supp. 1980) (fine not more than $500.00 or imprisoned not more than six months or both)

Me. Rev. Stat. tit. 19, §481 (1964) (fine not more than $300.00 or imprisoned not more than 11 months or both *except* if "high and aggravated" fine not more than $500.00 or imprisoned not more than two years or both)

Md. Code Ann. art. 27, §88(b) (1957) (Misdemeanor)

Mass. Gen. Laws Ann. ch. 273, §1 (West) (Supp. 1980) (fine not more than $500.00 or imprisoned not more than two years or both)

Mich. Comp. Laws Ann. §750.161 (1948) (Felony)

Minn. Stat. Ann. §609.375 (West) (Supp. 1980) (nonsupport less than 90 days-imprisonment not more than 90 days or fine not more than $300.00; over 90 days-felony)

Mo. Ann. Stat. ch. 559, §§330, 350 (Vernon) (1949) (Misdemeanor)

Mont. Rev. Codes Ann. §45-5-621 (1979) (Misdemeanor *except* if aggravated [left state to avoid duty of support] felony)

Neb. Rev. Stat. §28-449 (1975) (Misdemeanor *except* if over 30 days felony)

Nev. Rev. Stat. §201.020 (1979) (less than six months-misdemeanor, six months — one year-Gross misdemeanor, over one year-fine of no more than $500.00 imprisonment or both)

N.H. Rev. Stat. Ann. §639:4 (1977) (Misdemeanor)

N.J. Stat. Ann. §2A:100-1 (West) (1969) (Misdemeanor)

N.M. Stat. Ann. §30-6-1 (1978) (Misdemeanor *except* if results in great bodily harm 2nd degree Felony)

N.Y. Penal Law §260.05 (McKinney) (1980) (Class A Misdemeanor)

N.C. Gen. Stat. §14-322 (1969) (Misdemeanor)

N.D. Cent. Code §14.07-15 (1977) (Class C Felony)

Ohio Rev. Code Ann. §2919.21 (Baldwin) (1974) (1st Degree Misdemeanor)

Okla. Stat. Ann. tit. 21, §§851, 852 (West) (1951) (§851-desertion is a felony; §852-omission to provide for child is a misdemeanor *except* if parent leaves state to avoid providing support is a felony).

Or. Rev. Stat. §163.555 (1980) (Class C Felony)

18 *Pa. Cons. Stat. Ann.* §18-4321(a) (Purdon) (1973) (Misdemeanor)

P.R. Laws Ann. tit. 33, §4241 (1964) (Misdemeanor)

R.I. Gen. Laws §§11-2-1, 11-2-2 (1969 Reenactment, Supp. 1980) (§11-2-1-nonsupport is a misdemeanor; 11-2-2-desertion by leaving the state is a felony)

S.C. Code §20-7-40 (Supp. 1980) (Misdemeanor)

S.D. Compiled Laws Assn. §25-7-16 (Supp. 1980) (1st violation is a misdemeanor; subsequent violations are felonies *note* changed in 1977 to eliminate different penalties for violations by leaving state)

Tenn. Code Ann. §39-202 (1975 Replacement) (Misdemeanor)

Tex. Penal Code Ann. §25.05 (1974) (25.05(h)-class A Misdemeanor; (i)(2)-3rd degree felony if commits offense while residing in another state)

Utah Code Ann. §76-7-201 (1978) (76-7-201(2) is a misdemeanor; 76-7-201(3)(b) committed while residing in another state is a felony)

Vt. Stat. Ann. tit. 15, §15-202 (Supp. 1980) (imprisoned not more than two years and/or fine up to $300.00)

V.I. Code Ann. tit. 16 §371 (Supp. 1979) (Misdemeanor)

Va. Code §20-61 (Supp. 1980) (Misdemeanor)

Wash. Rev. Code Ann. §26.20.030 (Supp. 1980) (Over 16 years of age-Gross misdemeanor; under 16 years of age-felony)

W.Va. Code §48-8-1 (1980) (Misdemeanor)

Wis. Stat. Ann. §52.005 (Supp. 1980-1981) (Misdemeanor)

Wyo. Stat. §14-3-103 (1977) (Misdemeanor)